

1 Mathew K. Higbee, Esq., SBN 11158
2 HIGBEE & ASSOCIATES
3 1504 Brookhollow Dr., Suite 112
4 Santa Ana, CA 92705
5 (714) 617-8352
6 (714) 597-6729 facsimile
7 Email: mhigbee@higbeeassociates.com

8 Alyson Dykes, Esq. (*Pro Hac Vice Pending*)
9 LAW OFFICE OF JEFFREY LOHMAN, P.C.
10 4740 Green River Rd., Suite 206
11 Corona, CA 92880
12 (866) 329-9217
13 Email: alysond@jlohman.com

14 Attorneys for Plaintiff,
15 *CHRISTOPHER BANGCAYA*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 CHRISTOPHER BANGCAYA, an
19 individual,

20 Plaintiff,

21 v.

22 Capital One Banks (USA) N.A.,

23 Defendant.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

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26 NOW COMES Plaintiff, CHRISTOPHER BANGCAYA ("Plaintiff"),
27 through his attorneys, and hereby alleges the following against CAPITAL ONE
28 BANK (USA) N.A. ("Defendant"):

INTRODUCTION

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2 1. Count I of Plaintiff's Complaint is based on negligent violations
3 of the Telephone
4 Consumer Protection Act 47 U.S.C. § 227 et seq., (TCPA).

5 2. Count II of Plaintiff s Complaint is based on knowing and/or
6 willful violations of the Telephone Consumer Protection Act 47 U.S.C. § 227
7 et seq., (TCPA).

JURISDICTION AND VENUE

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9 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47
10 U.S.C. §227(b)(3). See,
11 *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that
12 federal and state courts have concurrent jurisdiction over private suits arising
13 under the TCPA.

14 4. Venue is proper in the United States District Court for the District of
15 Nevada pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District
16 and a substantial part of the events or omissions giving rise to the herein claims
17 occurred, or a substantial part of property that is the subject of the action is situated
18 within this District.

PARTIES

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20 5. Plaintiff is a natural person residing in Clark County, in the city of Las
21 Vegas, Nevada.

22 6. Defendant is a Virginia corporation, doing business in the State of
23 Nevada, with its principal place of business located in McLean, Virginia.

24 7. At all times relevant to this Complaint, Defendant has acted through
25 its agents employees, officers, members, directors, heir, successors, assigns,
26 principals, trustees, sureties, subrogees, representatives and insurers.

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FACTUAL ALLEGATIONS

8. Defendant is a "person" as defined by 47 U.S.C. § 153(10).

9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.

10. Defendant placed collection calls to Plaintiffs cellular telephone at phone number (702) 466-24XX.

11. Defendant placed collection calls to Plaintiff from phone numbers including, but not limited to (800) 955-6600.

12. Per its prior business practices, Defendant's calls were placed with an automated telephone dialing system ("auto-dialer").

13. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff, CHRISTOPHER BANGCAYA.

14. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15. Defendant's calls were placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

16. Defendant never received Plaintiffs "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

17. On or about September 14, 2017, Plaintiff called into Defendant's company at phone number (800) 955-6600 and spoke with Defendant's female representative and requested that Defendant cease calling Plaintiffs cellular phone.

18. During the conversation on September 14, 2017, Plaintiff gave Defendant his social security number and date of birth to assist Defendant in accessing his account before asking Defendant to stop calling his cell phone.

1 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call
2 his cellular telephone and/or to receive Defendant's calls using an automatic
3 telephone dialing system in his conversation with Defendant's representative on
4 September 14,2017.

5 20. Despite Plaintiffs request to cease, Defendant placed another
6 collection call to Plaintiff the next day, on September 15,2017.

7 21. Defendant continued to place collection calls to Plaintiff after
8 September 14, 2017

9 22. Despite Plaintiffs request that Defendant cease placing automated
10 collection calls, Defendant placed at least one hundred and nine (109) automated
11 calls to Plaintiffs cell phone.

12 **FIRST CAUSE OF ACTION NEGLIGENT VIOLATIONS OF THE**
13 **TELEPHONE CONSUMER PROTECTION ACT**

14 **(47 U.S.C. § 227)**

15 23. Plaintiff repeats and incorporates by reference into this cause of action
16 the allegations set forth above at Paragraphs 1-22.

17 24. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

20 25. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et
21 seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and
22 every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

23 26. Plaintiff is also entitled to seek injunctive relief prohibiting such
24 conduct in the future.

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1 **SECOND CAUSE OF ACTION KNOWING AND/OR WILLFUL**
2 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
3 **(47 U.S.C. § 227 et. seq.)**

4 27. Plaintiff repeats and incorporates by reference into this cause of action
5 the allegations set forth above at Paragraphs 1-22.

6 28. The foregoing acts and omissions of Defendant constitute numerous
7 and multiple knowing and/or willful violations of the TCPA, including but not
8 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et
9 seq.

10 29. As a result of Defendant's knowing and/or willful violations of 47
11 U.S.C. § 227 et seq.. Plaintiff is entitled an award of \$1,500.00 in statutory
12 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
13 U.S.C. § 227(b)(3)(C).

14 30. Plaintiff is also entitled to seek injunctive relief prohibiting such
15 conduct in the future.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, CHRISTOPHER BANGCAYA, respectfully requests
18 judgment be entered against Defendant, CAPITAL ONE FINANCIAL CORP., for
19 the following:

20 **FIRST CAUSE OF ACTION**

21 31. For statutory damages of \$500.00 multiplied by the number of
22 negligent violations of the TCPA alleged herein (109); \$54,500.00;

23 32. Actual damages and compensatory damages according to proof at time
24 of trial;

25 **SECOND CAUSE OF ACTION**

26 33. For statutory damages of \$1,500.00 multiplied by the number of
27 knowing and/or willful violations of TCPA alleged herein (109); \$163,500.00;

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JURY TRIAL DEMAND

Plaintiff, Christopher Bangcaya, hereby demands a trial by jury in the
above captioned matter.

Dated: June 6, 2018

Respectfully submitted,

/s/ Mathew K. Higbee

Mathew K. Higbee, Esq.
Washington Bar No. 42755
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8350
(714) 597-6729 facsimile
Counsel for Plaintiff.

/s/ Alyson Dykes

Alyson Dykes, Esq.
Pro Hac Vice Pending
LAW OFFICE OF JEFFREY
LOHMAN, P.C.
4740 Green River Rd., Ste 206
Corona, CA 92880
(866) 329-9217
Counsel for Plaintiff.